a receiver appointed by the Court was a servant of the Court and not the agent of the party in respect of whose estate he had been appointed receiver. I have examined these cases with care and cannot find that in any one of them there is anything to suggest that the receiver in question before his appointment as such had been in any way entitled to act as an agent of the party. In them, moreover, I can find no support for the proposition that the appointment of a party previously lawfully appointed the agent of another party is necessarily and finally extinguished by his appointment as a receiver. My atteention was further invited to the Indian case of *Shib Lal v. Sham Das*[13] where it was held that a natural guardian who had also been appointed as statutory guardian could not claim to be free from the limitations imposed upon the exercise of her guardianship by the statute under which she was appointed. In that case, however, I can find no support for the proposition that the status of a natural guardian is finally and completely extinguished by his appointment as a statutory guardian.

It is not, however, necessary to consider the point at any length. The truth is that on this point, to put it colloquially, the plaintiff has tried to have it both ways. First of all, he says the appointment of Letchumanan as a receiver was void *ab initio* and so is no protection to the defendants in respect of any act done by Letchumanan Chettiar before the Japanese decree was set aside. Then he turns round and says that he can take advantage of the appointment to say that it operated to extinguish Letchumanan's agency under the original power of attorney. From the horns of that dilemna I can see no escape.

Having arrived at the conclusions that at all material times Letchumanan Chettiar was the agent of the plaintiff, and as such had power to sell the plaintiff's land for the purposes of the plaintiff's business, it is unnecessary to consider the exact style in which Letchumanan Chettiar purported to execute the document dated 19th December, 1944. Whether he styled himself "Suppiah Chettiar" or "Appointed Receiver of the Assets of Suppiah Chettiar" or indeed the Emperor of Japan, is wholly beside the point. The hands may be the hands of Esau but the voice is the voice of Jacob. There is no doubt that it is he who executed these instruments. It is he who bound himself by them and he is personally liable upon them. And once his subsisting agency is established then it follows by reason of section 186 of the Contracts Ordinance (formerly section 233 of the Contract Enactment) the plaintiff is also liable.

The claim is accordingly dismissed with costs to be taxed.

As regards the counterclaim, the defendants must succeed on this also. On this they are clearly entitled to the first of the two alternative remedies claimed by them, that is to say, to the declaration that the plaintiff holds the lands as trustee for them and to the necessary vesting order to vest the legal estate in them. There is a clear contract to sell land on which the plaintiff is liable, the full consideration has been paid and since the date of the contract the defendants have been in possession.

There will be judgment accordingly with costs.

Judgment for the defendants on the claim as well as on the counterclaim.

SUPPIAH CHETTIAR v. MATHUVA THEVER AND NINE OTHERS.

[Orig. Civ. Juris. (Thomson, J.) March 20, 1951]

[Ipoh — Originating Motion No. 7 of 1950]

Japanese Judgments and Civil Proceedings Ordinance 1946 s. 3 — Discretion of Court to set aside Order.

In this case the Plaintiff asked for an order to set aside a Japanese decree dated 16th January 1945 whereby one Mathuwa Thevar, who was then the attorney of the plaintiff, was appointed receiver of the assets of the plaintiff and was given leave to sell eight pieces of land belonging to the plaintiff. The grounds of the application was that the Japanese decree was made by the Court without jurisdiction and that it was based on principles unknown to the existing laws. The evidence adduced in the case showed that the decree was made without jurisdiction.

Held, (1) that a party who seeks to ask that a decree be set aside under section 3(4)(c) of the Japanese Judgments and Civil Proceedings Ordinance must show that the decree which he wishes to set aside is based on principles of substantive law unknown to the existing laws and that it is not sufficient to show merely that the Court passing the decree acted without jurisdiction; (2) that the Court had a discretion in making an order under section 3 of the Japanese Judgments and Civil Proceedings Ordinance and that on the facts of this case the Court could not exercise its discretion in favour of the applicant.

Case referred to :—

(1) *Suppiah Chettiar v. Ong Pee Koi and another.* p. 48 *supra.*

ORIGINATING MOTION.

M. S. Mahendran for the applicant.

S. M. Sharma for the respondents.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J. : — This is another attempt by a moneylender to set aside sales of land made by his attorney during the Japanese occupation.

Such of the facts as the parties have seen fit to allow to come to my notice are contained in the affidavit of the applicant's present attorney Manickam Chettiar and the Japanese Court file to which he refers.

At all material times the applicant was residing in India, and one M. Mathuva Thever, now residing in India but then residing in Malaya, was his attorney. The actual power of attorney is not before me and I am not therefore in a position to form any opinion as to what powers it conferred upon the grantee.

During the Japanese occupation Mathuva Thever apparently found himself in the same position as many other agents of absentee owners of businesses, that is to say, he found himself faced with the problem of discharging liabilities on behalf of his principal which could not be discharged out of the available income from his principal's assets. In the circumstances he did what many others did in like case and availed himself of the legal fiction under which the Japanese Courts appointed persons in such a predicament to be receivers of their principal's estates and gave them leave to sell land at specified prices for specified purposes. I have dealt with that procedure and its legal effects at some length in the case of *Suppiah Chettiar v. Ong Pee Koi and Another*[1] and I do not propose to repeat here what I have said in that case.

In any event, on 15th January, 1945, Mathuva Thever applied to the Japanese Court to be appointed receiver of the assets of the present applicant and for leave as such receiver to sell eight specified pieces of land amounting to about twenty-six acres for a sum of not less than $20,000. In his supporting affidavit he set out the purposes for which he required money. These were to pay off an execution which had been levied on the applicant's property in respect of a pre-war judgment debt for maintenance, to satisfy certain other creditors of the applicant, to satisfy the demands of the Indian Independence League and to provide for his own maintenance, presumably in accordance with the Chettiar custom whereby an agent is entitled to maintenance at the expense of his principal. In the course of that affidavit he made the admission, which of course is only binding upon himself, that he had no power to sell, charge or lease the applicant's land.

On 16th January, 1945, the Japanese Court made the order prayed for and on dates and for prices neither of which specified, Mathuva Thever sold the land to nine persons who in addition to himself are the respondents to the present proceedings. The necessary transfers were executed and apparently have been registered.

On 2nd March, 1945, one Periakaruppan Chettiar, another attorney of the applicant, came upon the scene and initiated proceedings in the Japanese Court to have the order of 16th January, 1945, revoked. In thse proceedings an order was made by consent on 3rd March, 1945, for an inquiry as to the sale of the land under the order. There the matter rested and the respondents remained in undisturbed possession of the lands they had purchased until the present proceedings were commenced on 31st March, 1950.

In the present proceedings all that is asked at this stage is an order setting aside the Japanese decree of 16th January, 1945, on the grounds that it was made by the Court without jurisdiction and that it was based on principles unknown to the existing laws (which means of course pre-occupation laws) but it is admitted that the real object is to clear the way for an attack upon the respondents other than Mathuva Thever in their possession of the lands in question.

It is desirable at this stage to recapitulate the relevant provisions of the Japanese Judgment and Civil Proceedings Ordinance, 1946 :

By section 3(1) of that Ordinance any person aggrieved by a Japanese decree may apply to the Court for an order that such decree be set aside. By sub-section (2) it is provided that upon the hearing of any such application the Court may "subject to the provisions of this section make such order . . . . thereon as in the circumstances of the case may seem just", and by sub-section (4) it is provided as follows :—

> "Without prejudice to the generality of the provisions of sub-section (2) of this section, a Japanese decree may be set aside on any of the grounds following:
>
> (a) that it was obtained as a result of such force, injury or detriment to any party to the proceedings or other person, or such threat thereof, as, in the opinion of the appropriate Court, was sufficient to render the action of the party in relation to the proceedings involuntary;
>
> (c) that it was based on principles unknown to the existing laws; or
>
> (d) on any other ground which the appropriate Court considers to be sufficient."

I pause here to point out that the section as a whole clearly gives the Court a discretion, for the words "without prejudice to the generality of the provisions of sub-section (2)" make it clear that the order, if any, to be made by the Court must be such as in the circumstances of the case seems just irrespective of whether or not the case falls within one or the other of the categories set out in sub-section (4).

Returning to the provisions of the Ordinance, section 5 deals with the complementary question of the cases in which a decree of this Court can be substituted for a Japanese decree. Sub-section (6) of that section provides that no such decree shall be substituted if —

"(a) the Japanese Court acted without jurisdiction; or

(d) the Japanese decree was based upon principles unknown to the existing law."

The only other provision that calls for attention here is section 7 which provides that no Japanese decree "shall be pleaded by way of set-off or counterclaim or otherwise in any proceedings" unless the decree of this Court has been substituted for it.

From a comparison of the wording of section 3 and section 5 it is clear that the Legislature has drawn a distinction between the case where a decree is based on principles unknown to the existing laws and the case where a Court has acted without jurisdiction, a distinction corresponding to the well known distinction between substantive and adjective law. That proposition would seem to follow from the fact that the two cases are set out separately in section 5. On that basis a party who seeks to bring himself within the scope of section 3(4)(c) as a preparatory step to asking the Court to exercise in his favour the discretion given to it by section 3(2) must shew that the decree which he wishes set aside is based on principles of substantive law unknown to the existing laws, it is not sufficient to shew merely that the Court passing the decree acted without jurisdiction. This the present applicant has failed to do for it is clear that the decree is based on the doctrine of agency of necessity which is thus stated in the F.M.S. Contract Enactment as follows :—

"An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances."

Whether the Japanese Court applied that doctrine correctly is, of course, a matter of opinion but, on the face of it, all the circumstances which justify the application of the doctrine were present. The agent could not communicate with his principal, the course he wished to take was the only reasonable and prudent one to take in the circumstances and he appeared to be acting *bona fide* in the interest of all parties concerned.

But even if the applicant had brought himself within section 3(4)(c) I would refuse to exercise my discretion under section 3(2) in his favour for two reasons.

In the first place, I am asked to set the Japanese decree aside so as to clear the way for an attack upon the titles of all the respondents other than the first to the land of which they are at present in possession, and I am asked to do so without a scintilla of evidence even to suggest that they are not all innocent purchasers in good faith for value. Moreover, I have nothing but the bare opinion of Mathuva Thever which may or may not be of any value to suggest that he did not in fact have power to sell the applicant's land irrespective of any order by the Japanese Court.

In the second place, I refuse to make the order asked for because I fail to see that to do so would be of any legitimate advantage to the applicant. There may have been fraud, there may have been conspiracy, there may have been lack of contractual power on the part of Mathuva Thever. On all these points all I have to say is there is a complete absence of evidence at this stage. If, however, evidence be forthcoming of any of these things the Japanese decree of 16th January, 1945, will be of no assistance whatsoever to Mathuva Thever or any of the other respondents. It was made without jurisdiction and is to be treated as if it had never existed. By reason of section 7 of the Japanese Judgments Ordinance it cannot be set up in any way by any of the defendants in answer to any claim that may be made against him. In the circumstances I fail to see that any useful purpose would be served by setting it aside.

The application is dismissed with costs.

Application dismissed.

SOOSAY DASS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) February 23, 1951]

[K. L. — Criminal Appeal No. 79 of 1950]

Accomplice — Prevention of Corruption Ordinance, 1950, s. 13(3).

The Prevention of Corruption Ordinance, 1950, section 13(3) modifies the law and practice not as to accomplices generally but only as to a specified class of accomplices. In cases to which this Ordinance applies a witness who is an accomplice only by reason of making a corrupt payment is not presumed to be unworthy of credit.

A person who makes a corrupt payment only under pressure is less seriously discredited than one who does so voluntarily.

Cases referred to :—

(1) *Trowell v. Public Prosecutor* (1941) F.M.S.-L.R. 77 at p. 78; (1946) M.L.J. 41.

(2) *Public Prosecutor v. Haji Ismail* (1939) F.M.S.L.R. 134; (1940) M.L.J. 76.

(3) *Daimon bin Banda v. Public Prosecutor* (1951) M.L.J. 11.

(4) *Quinn v. Leathem* (1901) A.C. 495 at p. 504.